



NEWS RELEASE

**NELSON P. COHEN
UNITED STATES ATTORNEY
DISTRICT OF ALASKA**

Federal Building & U.S. Courthouse • 222 W. 7th Avenue • Room 253 • Anchorage, AK 99513-7567 • (907) 271-5071

**FOR IMMEDIATE RELEASE
Wednesday, August 22, 2007**

#07-118

**OPERATOR OF THE M/V SELENDANG AYU PLEADS
GUILTY TO CHARGES ARISING FROM GROUNDING IN THE ALEUTIANS**

Anchorage, Alaska – United States Attorney Nelson P. Cohen announced today, August 22, 2007, that IMC Shipping Co. Pte. Ltd.(IMC), a Singapore Corporation, pled guilty in federal court to a three-count information charging two violations of the Refuse Act for the illegal discharge of oil and soy beans, and one violation of the Migratory Bird Treaty Act for killing of thousands of migratory birds, all of which resulted from the grounding on December 8, 2004 of the M/V Selendang Ayu which was operated by IMC.

IMC pled guilty to a three-count information and was sentenced to pay a criminal penalty of \$10 million. The criminal penalty includes \$4 million to be paid for community service. \$3 million of that will be used to conduct a risk assessment and related projects to reduce the shipping hazards of the area where the M/V Selendang Ayu went aground near Unalaska Island, and \$1 million will be paid to the Alaska Maritime National Wildlife Refuge, Aleutian Chain Unit. IMC has also been sentenced to serve 3 years probation with a special condition that an audit of IMC's maintenance program be conducted.

Mr. Cohen said, “. . .these were very serious environmental crimes. The grounding of the M/V Selendang Ayu spilled approximately 340,000 gallons of bunker fuel, as well as several thousands of tons of soy beans, into the Bering Sea in the Alaska Maritime National Wildlife Refuge in the Aleutians resulting in the deaths of several thousand migratory birds. The subsequent efforts by the U.S. Coast Guard to rescue the crew of the Selendang Ayu resulted in the loss of a U.S. Coast Guard helicopter at sea when it was struck during the storm by a 30 foot wave. Tragically, six of the Selendang Ayu crew members died in the crash.¹ The cost of the clean up of the spill was over \$100 million. Accordingly, the total criminal penalty of \$10,000,000, is necessary as this substantial dollar amount adequately reflects the seriousness of these strict liability offenses.

The large criminal penalty imposed should cause those traveling our waters to be deterred from similar conduct. That deterrence will provide our precious natural resources of the sea, the land and the air a measure of protection from future similar occurrences. In addition, the sentence calls for monies from the criminal penalties to fund studies to determine ways to make travel through these dangerous waters more safe, and monies to fund projects to implement the findings from those studies.”

(more)

¹A casualty investigation into the deaths of crew members was undertaken by the National Transportation Safety Board.

Regarding the criminal resolution, Stan Pruszenski, Special Agent in Charge, U.S. Fish and Wildlife Service, Office of Law Enforcement, Alaska said: "The Aleutian Islands and Unalaska are a region rich in wildlife diversity and critically important as migratory bird habitat. This area of the Alaska Maritime Refuge hosts seabird populations of both national and international significance. This resolution is a positive step toward restoration and future protection of this habitat. I am particularly encouraged by the allocation of monies to conduct a risk assessment to protect the wildlife and habitat in this busy shipping corridor."

Granta Nakayama, the U.S. Environmental Protection Agency's Assistant Administrator for Enforcement and Compliance Assurance stated, "The defendant's actions led to the spill of 340,000 gallons of oil into the Alaska Maritime National Wildlife Refuge. Companies that gamble with safety and violate the laws that protect our environment will be prosecuted."

In connection with the entry of the guilty pleas, Federal Bureau of Investigation (FBI) Assistant Special Agent in Charge of the Anchorage Field Office, David Heller, "The FBI takes very seriously our role in enforcing the nation's environmental statutes and we greatly appreciate the close relationships we have with the agencies with whom we worked on the Selendang Ayu investigation. As future challenges arise, we look forward to the opportunity to continue to support our partner agencies in protecting the Alaskan people, economy, and environment."

Previously, the captain of the M/V Selendang Ayu, Kailash Bhushan Singh, pled guilty in United States v. Singh, A05-0025, on April 1, 2005, to a charge of making a false statement during the casualty investigation regarding the time the engine was shut down prior to the grounding of the M/V Selendang Ayu.

The plea agreement in this case addresses only IMC's criminal culpability. The state and federal trustees are continuing to assess natural resource damages from the spill. This plea agreement does not limit any civil liability that IMC may have to any person or entity, including any federal, state or local government agency.

The facts which support the plea, most of which are agreed to and are recited in the plea agreement, are as follows:

The United States has conducted an extensive investigation into the facts surrounding the grounding of the M/V Selendang Ayu. This investigation involved many technical and complex issues. and the investigation included depositions taken of witnesses by the U.S. Attorney's office, as well as numerous interviews conducted by agents of the U.S. Environmental Protection Agency Criminal Investigation Division, the U.S. Coast Guard, and the Federal Bureau of Investigation, as well as evidence collected by the U.S. Fish and Wildlife Service Office of Law Enforcement, and review of voluminous records and documents, and consultation with IMC's and the government's experts. The National Transportation Safety Board (NTSB) also conducted a casualty investigation.

(more)

Under the Clean Water Act, it is a misdemeanor to negligently discharge oil into waters of the United States, and federal courts have held that the United States need only prove that ordinary negligence caused a discharge to sustain a conviction for a negligent discharge of oil.

The United States believes it is in a position to seek an indictment of IMC charging a false statement count for the actions of the ship's crew regarding the initial statements made by agents of IMC, including the vessel's captain, to the U.S. Coast Guard and the NTSB regarding the casualty, and charging a misdemeanor count for a negligence violation of the Clean Water Act for the actions of the company and crew leading up to the grounding.

IMC, for its part, recognizes its vicarious liability for the crew's misstatements to the NTSB and the U.S. Coast Guard in some of the initial interviews, but disputes that the grounding was the result of any negligence on the part of IMC or any of its affiliates or agents. In recognition of the cooperation of IMC in the investigation by the United States, and consistent with the policies of the Department of Justice set out in the Principles of Federal Prosecution of Business Organizations, and the Environmental Crimes Section's Voluntary Disclosure Policy, the United States has agreed to forego False Statement and Clean Water Act charges against IMC.

The parties agree that in December 2004, the M/V Selendang Ayu, operated by IMC, was traveling the Great Circle Route through the Aleutian chain in Alaska when it went aground near the north shore of Unalaska Island, west of Skan Bay in the Bering Sea. Unalaska Island is within the Alaska Maritime National Wildlife Refuge (Refuge). On December 6, 2004, the discovery of a crack in the engine's number three cylinder liner led the crew to shut down the engine. The ship drifted for three days in high winds and heavy seas while the crew attempted to repair the engine. The crew was never able to restart the engine. On December 8, 2004, the M/V Selendang Ayu ran aground on the north shore of Unalaska Island, west of Skan Bay.

The Refuge where the ship went aground hosts the largest nesting population of seabirds in North America. The Refuge is a significant site for migratory seabirds both nationally and internationally. The Refuge's primary functions are to facilitate scientific research regarding the health of the ocean and promote conservation of seabirds. As a result of the grounding of the Selendang Ayu, approximately 340,000 gallons of bunker oil spilled into the ocean killing migratory birds in numbers into the thousands, and oiling 20 miles of coastline and spilling thousands of metric tons of soy beans into the Bering Sea.

The parties disagree about the cause of the crack in the cylinder liner of the engine on the M/V Selendang Ayu. The government believes its evidence would show that the crack in the cylinder that precipitated the engine shutdown and subsequent inability to restart the engine was caused by improper maintenance and inappropriate operation of the engine exacerbated by the forecasted heavy weather experienced by the ship along the Great Circle Route. IMC disagrees with the government's conclusions regarding the maintenance and operation of the ship's engine and believes that the evidence would show that the crack in the cylinder liner was not caused by improper maintenance or inappropriate operation of the engine.

(more)

More specifically, the United States believes that thermal loading caused the cylinder crack and that the thermal loading was caused by improper maintenance including the failure to adequately clean and seal the cylinders. This problem was exacerbated by the mal-adjustment of the engine's variable injection timing and un-addressed problems with the turbo chargers. The United States further believes that when the ship encountered the forecasted heavy weather along the Great Circle Route, the strain on the engine from trying to maintain speed in gale-force winds and 30-foot seas strained the compromised number three cylinder to the breaking point. After the number three cylinder cracked, the crew attempted to make repairs and restart the engine. Due to the poor state of repair of all the cylinders—in conjunction with the cold weather—the engine did not have adequate compression to restart. Because the engine could not be re-started, and because there were no barges with adequate towing capacity in the vicinity, the M/V Selendang went aground. IMC disagrees with the United States' theory of negligence regarding the maintenance and operation of the ship's engines.

The parties agree that since the incident IMC has acted in a responsible manner by cooperating with the investigation by the United States. It cooperated as requested in the NTSB investigation into the Selendang Ayu casualty, making witnesses available to the NTSB, and providing the NTSB with documents relating to the vessel. When IMC learned that Captain Singh, the master of the vessel, had made false statements to the NTSB regarding the incident, and had instructed other crew members to do so as well, IMC insisted that the crew-witnesses correct their statements and made all of the crew available to the NTSB for further questioning. The NTSB has indicated that as a result of IMC's intervention the master's actions did not hinder the investigation.

IMC also cooperated as requested in the investigation conducted by the U.S. Attorney's Office into the M/V Selendang Ayu casualty. It voluntarily accepted subpoenas and produced thousands of pages of documents to the United States relating to the vessel. It made foreign witnesses available to the United States in Singapore and in Anchorage, who would otherwise have been beyond the subpoena power of the United States, and voluntarily shared technical information regarding the incident with federal investigators.

IMC has also cooperated as and whenever requested by state and federal authorities overseeing the cleanup of oil spilled as a result of the incident.

Mr. Cohen congratulated the U.S. Coast Guard, the U.S. Environmental Protection Agency's Criminal Investigation Division, the U.S. Fish and Wildlife Service Office of Law Enforcement, and the Federal Bureau of Investigation for the joint investigative efforts that led to this conviction. He also congratulated Senior Trial Attorney Robert Anderson from the Environmental Crimes Section of the Department of Justice, and the following trial attorneys in the U.S. Attorney's Office in the District of Alaska: Assistant U.S. Attorney Andrea (Aunnie) Steward, Assistant U.S. Attorney Kevin Feldis and Special Assistant U.S. Attorney Todd Mikolop.

###